

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OMNIPOINT COMMUNICATIONS INC.,
d/b/a T-MOBILE, AND
OMNIPOINT NY MTA LICENSE, LLC

Plaintiffs,

- against-

NOTICE OF CROSS-
MOTION FOR PARTIAL
SUMMARY JUDGMENT
PURSUANT
TO FRCP RULE 56

08 CV. 2201 (WCC) (GAY)
(ECF CASE)

TOWN OF LAGRANGE,
TOWN OF LAGRANGE ZONING BOARD OF APPEALS,
TOWN OF LAGRANGE PLANNING BOARD, AND
TOWN OF LAGRANGE PLANNING, ZONING AND
BUILDING DEPARTMENT

Defendants.

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PLEASE TAKE NOTICE, that upon the accompanying Memorandum of Law together with all of the pleadings and proceedings heretofore had herein, Defendants TOWN OF LAGRANGE, TOWN OF LAGRANGE ZONING BOARD OF APPEALS, TOWN OF LAGRANGE PLANNING BOARD and TOWN OF LAGRANGE PLANNING, ZONING AND BUILDING DEPARTMENT, by their attorneys, Van DeWater & Van DeWater, LLP, will cross move this Honorable Court for summary judgment pursuant to Federal Rules of Civil Procedure Rule 56 for the following relief:

1. Dismissal of the Fifth Claim ("Substantial Evidence") alleging a violation the Telecommunications Act ("TCA") §332(c)(7)(B)(iii) as contained within the Amended Complaint dated April 4, 2008, as against the Town of LaGrange Planning Board and the Town of LaGrange Department of Planning, Zoning and Building;

2. Dismissal of the Sixth Claim ("Effective Prohibition of Service") alleging a violation of the TCA §332(c)(7)(B)(i)(II) as contained within the Amended Complaint dated April 4, 2008, as against the Town of LaGrange Planning Board and the Town of LaGrange Department of Planning, Zoning and Building;

3. Dismissal of the Eighth Claim ("Improper Denial based on Environmental Effect of Radio Frequency Emissions") alleging a violation of the TCA §332(c)(7)(B)(iv) as contained within the Amended Complaint dated April 4, 2008, as against all of the Defendants;

4. Dismissal of the Ninth Claim ("State Law Declaratory Relief for Improper Imposition of Variance Requirement") as contained within the Amended Complaint dated April 4, 2008, as against all of the Defendants; and

5. Dismissal of the Tenth Claim ("State Law Claims") seeking relief under CPLR Article 78 as against the Town of LaGrange Planning Board and the Town of LaGrange Department of Planning, Zoning and Building.

Pursuant to a So-Ordered Stipulation between the parties, dated June 20, 2008, the parties Response in Opposition to this cross-motion for summary judgment is due by August 15, 2008.

Dated: Poughkeepsie, New York
July 25, 2008

Yours, etc.

VAN DEWATER & VAN DEWATER, LLP

BY: /s/ Rebecca A. Valk

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